

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

V.

TONY McLEOD,

Defendant.

Case No. 13CR2297-JLS/JMA

ORDER OF DETENTION

In accordance with §3142(F) of the Bail Reform Act of 1984, 18 U.S.C. § 3142(f), a detention hearing was held on August 1, 2013, to determine whether Tony McLeod (“Defendant”) should be held in custody pending trial, on the grounds that Defendant is a flight risk and a danger to the community. Assistant U.S. Attorney Charlotte E. Kaiser appeared on behalf of the United States. Shereen Charlick specially appeared for Leila Morgan on behalf of Defendant.

Based on the evidence proffered by the United States and Defendant, the Pretrial Services report, along with exhibits entered by the United States, the Court concludes that the following facts establish by a clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community should Defendant be released from custody:

J.

FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged [18 U.S.C. § 3142(g)(1)]

1. Defendant is charged in an Indictment with Enticement of Minor, in violation of 18 U.S.C. § 2422(b).

2. If convicted of this charge, Defendant faces a mandatory minimum sentence of 10 years and maximum sentence of life imprisonment.

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2 3. Given this charge, under 18 U.S.C. § 3142(e)(3)(E), there is a rebuttable
3 presumption that Defendant should be detained.

4 B. Weight of the Evidence Against the Defendant [18 U.S.C. § 3142(g)(2)]

5 1. Although this factor is to be given the least weight, the United States
6 produced multiple exhibits that demonstrate that Defendant definitively knew that the
7 minor victim #1 (“MV#1”) represented himself to be under the age of eighteen years
8 old as of May 26, 2013 at the latest. Thereafter, Defendant continued to engage in
9 sending sexually explicit text messages and obscene photographs to MV#1. On or
10 about May 27, 2013, MV#1’s family learned about the communications and asked
11 Defendant to stop having contact with MV#1 as he was fourteen (14) years-old. On
12 June 10, 2013, however, Defendant used free airfare obtained from his partner to fly on
13 an airline from Florida to California, pick up MV#1 from MV#1’s middle school in
14 Escondido, California, and then obtained discounted airfare from another friend to fly
15 with MV#1, having MV#1 use an alias, from California to Florida.

16 C. History and Characteristics of the Defendant [18 U.S.C. § 3142(g)(3)]

17 1. Character: Issues of character were not explicitly raised during the
18 hearing. This factor will be treated as neutral.

19 2. Physical and Mental Condition: Defendant reported no physical or mental
20 issues. This factor weighs against detention.

21 3. Family Ties: Defendant has no ties to Southern California and has ties to
22 Tampa, Florida. This factor weighs against detention.

23 4. Employment: Defendant has a work history. This factor weighs against
24 detention.

25 5. Financial Resources: Defense counsel advised that Defendant has property
26 and that his adoptive father would serve as a surety. This factor weighs against
27 detention.

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1 6. Length of Residence in the Community: Defendant is a United States
2 citizen, and has been living in Tampa, Florida at least six years. His current residence
3 situation is stable. This factor weighs against detention.

4 7. Community Ties and Past Conduct: The “community ties” and “past
5 conduct” factors implicate considerations that are duplicative of other findings already
6 made by the Court in this Order. As a result, these factors will be treated as neutral.

7 8. History Relating to Drug or Alcohol Abuse: Defendant has no history of
8 drug or alcohol abuse. This factor weighs against detention.

9 9. Criminal History: Defendant has law enforcement contacts but no prior
10 criminal convictions. This factor weighs against detention.

11 10. Record Concerning Appearance at Court Proceedings and on Probation,
12 Parole or Other Release: Defendant has no known failures to appear or probation
13 violations. This factor weighs against detention.

14 D. Nature and Seriousness of the Danger to Any Person or the Community
15 [18 U.S.C. § 3142(g)(4)]

16 For the reasons already discussed, Defendant poses a danger to any person or the
17 community that would be posed by his release. MV#1's family also has expressed a
18 fear of Defendant having further contact with them given Defendant took MV#1
19 without the family's permission and knows where they live.

II.

CONCLUSIONS REGARDING DETENTION

Based on the factors set forth in 18 U.S.C. § 3142(g) and Defendant's failure to rebut the presumption that he should be detained, the United States has satisfied its burden of demonstrating that Defendant poses a danger to any other person and the community and that no condition or combination of conditions will reasonably assure the safety of any other person and the community should Defendant be released from custody in this case.

Because the Court detains Defendant based on being a danger, it does not rule on whether Defendant poses a flight risk at this time.

III.

ORDER

5 IT IS HEREBY ORDERED that Defendant be detained pending trial and, if
6 convicted, sentencing in these matters.

7 IT IS FURTHER ORDERED that Defendant be committed to the custody of the
8 Attorney General or his designated representative for confinement in a corrections
9 facility separate, to the extent practicable, from persons awaiting or serving sentence or
10 being held in custody pending appeal. Defendant shall be afforded reasonable
11 opportunity for private consultation with counsel.

12 While in custody, upon order of a court of the United States or upon the request
13 of an attorney for the United States, the person in charge of the correctional facility shall
14 deliver Defendant to the United States Marshal for the purpose of an appearance in
15 connection with a court proceeding or any other appearance stipulated to by defense
16 and government counsel.

17 This order is made without prejudice to modification by this Court at a future
18 date.

19 IT IS SO ORDERED.

20 DATED: August 6, 2013

J. M. Allen

THE HONORABLE JAN M. ADLER
United States Magistrate Judge
United States District Court for the
Southern District of California